

## **Attorney General's Notice**

*Pursuant to G.L. c. 40, § 32, as amended by  
Chapter 299 of the Acts of 2000*

**Town of Carver-- Case No. 10077**  
**Annual Town Meeting of April 13, 2021**  
**Article # 22**

Attorney General's Limited Authority to Waive Procedural Defects in the Notice of the Planning Board Hearing  
Pursuant to the provisions of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, if the Attorney General finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to the form or content of the notice of the Planning Board hearing prescribed by G.L. c. 40A, § 5, or to the manner or dates on which said notice is mailed, posted or published as required by that section, then instead of disapproving the by-law or amendment by reason of any such defect, the Attorney General may elect to proceed under the defect waiver provisions of G.L. c. 40, § 32. Under those provisions, the Attorney General is conditionally authorized to waive any such defect.

### Defect Determined in Notice of Planning Board Hearing

The Attorney General has determined that the planning board hearing notice relating to the above Article failed to comply with the notice requirements for such hearing established by G.L. c. 40A, § 5. Section 5 provides in part (with emphasis added):

No zoning...by-law or amendment thereto shall be adopted until after the planning board in a...town has...held a public hearing thereon...at which interested persons shall be given an opportunity to be heard.... Notice of the time and place of such hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the...town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the...town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town...

Based on the materials submitted to this Office, we have identified the following defect: the Planning Board hearing notice was not sent to the Department of Housing and Community Development, the Regional Planning Agency, and the planning boards of the abutting cities and towns, as required by G.L. c. 40A, § 5. Apart from this defect, the notice appears to satisfy the requirements of the statute.

### Attorney General's Election to Proceed Under the Waiver Provisions of G.L. c. 40, § 32

The Attorney General has elected to proceed under the limited defect waiver authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000.

### Suspension of Review of Zoning By-Law Amendments

The 90-day period prescribed by law for the Attorney General's review of local by-laws is therefore suspended in accordance with the provisions of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000.

Posting and Publication of This Notice

The Town Clerk shall post a true copy of this Notice in a conspicuous place in the Carver Town Hall for a period of not less than 14 days and shall publish a copy once in a newspaper of general circulation in the Town of Carver.

Filing of Claim That Defect in Notice Was Misleading or Otherwise Prejudicial

Within 21 days of the date on which this Notice is published in a newspaper of general circulation in the Town of Carver, any resident of the Town of Carver, or the owner of any real property in the Town of Carver or any other party entitled to notice of the planning board hearing may file with the Town Clerk a written statement that the notice defect was misleading or otherwise prejudicial. The statement must include the reasons supporting the claim that the defect in the Planning Board Notice was misleading or otherwise prejudicial. This statement must be actually on file with the Town Clerk not later than 21 days from the date on which this Notice is published in the newspaper.

Town Clerk's Certification of Compliance with This Notice

After the expiration of the 21-day period, the Town Clerk shall submit to the Attorney General a true copy of this Notice with a certification of compliance with the publishing and posting requirements of the preceding paragraph, and a certification that either (a) no claim was filed within the 21-day period, or (b) one or more claims were filed within the 21-day period. The Town Clerk shall submit to the Attorney General true copies of any such claim(s).

Resumption of Attorney General's Review

Upon receipt of one original copy of this Notice with the Clerk's certification, the 90-day period provided for the Attorney General's review under G.L. c. 40, § 32, shall resume. If no claim is made, the Attorney General has the discretion to waive any such defect; if any claim is made, however, the Attorney General may not waive any such defect.

**Note: By not filing a claim under this provision, a person shall not be deprived of the right to assert a claim of invalidity arising out of any possible defect in the procedure of adoption or amendment, as provided in G.L. c. 40, § 32, and in G.L. c. 40A, § 5.**

Date: August 4, 2021

Very truly yours,

MAURA HEALEY  
ATTORNEY GENERAL

*Nicole B. Caprioli*

By: Nicole B. Caprioli  
Assistant Attorney General  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608

cc: Town Counsel Gregg Corbo

## Chapter 299 of the Acts of 2000

### AN ACT RELATIVE TO ZONING BY-LAWS.

*Whereas* , The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith an alternative procedure for the attorney general to review zoning by-laws, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

Section 32 of chapter 40 of the General Laws is hereby amended by adding the following two paragraphs:-

Notwithstanding the provisions of the preceding paragraph, if the attorney general finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to form or content of the notice of the planning board hearing prescribed in section 5 of chapter 40A, or to the manner or dates on which said notice is mailed, posted or published as required by said section 5, then instead of disapproving the by-law or amendment because of any such defect, the attorney general may proceed under the provisions of this paragraph. If the attorney general so elects, written notice shall be sent to the town clerk within a reasonable time setting forth with specificity the procedural defect or defects found, including a form of notice thereof, whereupon the running of the 90-day period provided for the attorney general's review pursuant to this section shall be suspended. The town clerk shall forthwith post the notice in a conspicuous place in the town hall for a period of not less than 14 days, and shall publish it once in a newspaper of general circulation in the town. The notice shall state that any resident, the owner of any real property in the town, or any other party entitled to notice of the planning board hearing, who claims that any such defect was misleading or was otherwise prejudicial may, within 21 days of the publication, file with the town clerk a written notice so stating and setting forth the reasons supporting that claim. Forthwith after the expiration of said 21 days, the town clerk shall submit to the attorney general either (a) a certificate stating that no claim was filed within the 21 day period, or (b) a certificate stating that one or more claims were filed together with copies thereof. Upon receipt of the town clerk's certificate, the 90-day period provided for the attorney general's review pursuant to this section shall resume; but if the expiration of the 90-day period is less than ten days from the date on which the town clerk's certificate was received, then the review period shall be extended to the tenth day following such receipt. If no claim was made, the attorney general may waive any such defect; but, if any claim is made then the attorney general may not waive any such defect. However, by not filing a claim under this paragraph, a person shall not be deprived of the right to assert a claim of invalidity arising out of any possible defect in the procedure of adoption or amendment as provided in this section and in section 5 of chapter 40A.

Notwithstanding the provisions of the first paragraph of this section, the attorney general and the town counsel may, by an agreement in writing setting forth the reasons therefor and filed with the town clerk before the end of the 90-day period, extend the 90-day period provided for the attorney general's review pursuant to this section for not more than an additional 90 days.

Approved October 18, 2000.





*Cranberry Land U.S.A.*

## *Town Clerk*

Cara Dahill

Cara.Dahill@carverma.org

108 Main Street

Carver, Massachusetts 02330

Tel: 508-866-3403 • Fax: 508-866-3408

May 3, 2021

### TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that at the Annual Town Meeting of the Inhabitants of Carver held on Tuesday April 14<sup>th</sup> 2021 at the Carver High School Auditorium at 7:00P.M., pursuant to the Warrant of the Select Board dated April 5, 2021. The Meeting was called to order at 7:34 P.M. by the Moderator, Sean R. Clancey, there being a quorum of 75 present. The total registered voters at this time were 89. The following Article was voted on:

### **ARTICLE 22: FLOODPLAIN DISTRICT:**

To see if the Town will vote to repeal Section 3700 of the Carver Zoning Bylaw in its entirety and replace it as set forth below or take any other action related thereto: 3700. FLOODPLAIN DISTRICT 3710. Scope of Authority. The Floodplain District is an overlay district and shall be superimposed on the other districts established by this bylaw. All regulations in the Carver Zoning Bylaw applicable to such underlying districts shall remain in effect, except that where the Floodplain District imposes additional regulations, the more stringent regulations shall prevail. 3720. Purpose. The purpose of the Floodplain District is to: 1) Ensure public safety through reducing the threats to life and personal injury; 2) Eliminate new hazards to emergency response officials; 3) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding; 4) Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding; 5) Eliminate costs associated with the response and cleanup of flooding conditions; 6) Reduce damage to public and private property resulting from flooding waters. 3730. Floodplain District Delineation. 3731. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Carver on the Plymouth County Flood Insurance Rate Map (FIRM) dated July 6, 2021, issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Plymouth County Flood Insurance Study (FIS) report dated July 6, 2021. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Building Commissioner, Planning Board, and Conservation Commission. 3740. Administration, Abrogation, Liability, Severability 3741. Administration and Enforcement. The Town designates the position of

Building Commissioner to be the official floodplain administrator for the Town of Carver. The Building Commissioner shall administer and enforce this by-law section in accordance with Section 5100 of the Carver Zoning By-laws. 3742. Abrogation. The Floodplain management regulations found in this Floodplain District section shall take precedence over any less restrictive conflicting bylaws or regulations. 3743. Liability Disclaimer. The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection. 3744. Severability. If any section, provision or portion of this bylaw is deemed unconstitutional or invalid by a court, the remainder of the bylaw shall be effective. 3740. New Technical Data Submission Requirements If the Town acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town will, within 6 months, notify FEMA of these change(s) by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to: FEMA Region I Risk Analysis Branch Chief 99 High St., 6th Floor Boston, MA 02110 And a copy of notification to: Massachusetts NFIP State Coordinator Massachusetts Department of Conservation & Recreation 251 Causeway Street Boston, MA 02114 3750. Variances/Permits in the Floodplain 3751. Building Code Floodplain Variance. The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files. The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering the property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain district. 3752. Local Zoning Variances. A variance from these floodplain bylaws must meet the requirements set out by State law, and may be only granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief. 3753. Floodplain Permits. The Town of Carver requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties. 3754. Permitting Review Process. Carver's permit review process includes the use of a checklist of all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain district. The proponent must acquire all necessary permits, and must submit the completed checklist demonstrating that all necessary permits have been acquired. 3755. Subdivision and Other Development Proposals. All subdivision and development proposal in the floodplain district shall be reviewed to assure that: (a) Such proposals minimize flood damage; (b) Public utilities and facilities are located and constructed so as to minimize flood damage; and (c) Adequate drainage is provided. 3760. Use Regulations. 3761. Permitted Uses. Except as otherwise provided, in the Floodplain District, no new building shall be constructed, and no existing structure shall be enlarged within its existing footprint, moved to a more vulnerable location, or altered except to upgrade for compliance with documented existing health and safety codes; no dumping, filling, or earth transfer or relocation shall be permitted; nor shall any land, building or structure be used for any purposes, except: a. Outdoor recreation, including play areas, nature study, boating, fishing and hunting where otherwise legally permitted, but

excluding buildings and structures. b. Wildlife management or conservation areas, foot, bicycle, and/or horse paths and bridges, provided such uses do not affect the natural flow pattern of floodwaters or of any water course. c. Agricultural uses or forestry uses. d. Uses lawfully existing prior to the enactment of this bylaw. 3765. Use Limitations. 3766. No development or redevelopment shall be permitted within FEMA identified Special Flood Hazard Areas, except where fire, storm, or similar disaster caused damage to or loss of greater than 50% of the market value of buildings in this high hazard zone. 3767. No new public infrastructure or expansion of existing infrastructure shall be made in FEMA A flood zones unless there is a documented and accepted overriding public benefit provided, and provided that the infrastructure will not promote new growth or development in these areas. New or replacement water and/or sewer systems shall be designed to avoid impairment to them or contamination from them during flooding. 3768. Development and redevelopment shall be subject to the requirements of the FEMA identified Special Flood Hazard Areas and related policies and regulations; 3769. Public infrastructure and private wastewater treatment facilities may be constructed in FEMA Mapped A-zones provided that: 1) the facilities are consistent with the Flood Hazard Mitigation Plan and 2) the infrastructure is flood resistant. 3770. All new buildings or substantial improvements to existing structures in the FEMA Azone shall comply with FEMA and State Building Code regulations for elevation and flood proofing. 3771. In Zone AE, along watercourses within the Town of Carver that have a regulatory floodway designated on the Plymouth County FIRM encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge." 3772. All subdivision proposals must be designed to assure that: a) Such proposals minimize flood damage; b) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and c) Adequate drainage is provided to reduce exposure to flood hazards. 3773. No activity shall increase the elevation or velocity of flood waters or flows in the floodplain district. 3775. Base Flood Elevation, Floodway Data and Flood Zones. 3776. Base Flood Plain Elevation Data. When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine, base flood elevations for each developable parcel shown on the design plans. 3776. Unnumbered A Zones. In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential structures to or above base flood level, and for prohibiting encroachments in floodways. 3777. Floodway Encroachment. In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. 3778. AO and AH Zones. Within Zones AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures. 3779. Recreational Vehicles. In A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready. 3780. Notification of Watercourse Alteration In a riverine situation The

Town of Carver shall notify the following of any alteration or relocation of a watercourse: Abutting Communities: NFIP State Coordinator Massachusetts Department of Conservation and Recreation 251 Causeway Street, 8th Floor Boston, MA 02114 NFIP Program Specialist: Federal Emergency Management Agency, Region I 99 High Street, 6th Floor Boston, MA 02110 3790. Definitions. DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59] FLOOD BOUNDARY AND FLOODWAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.) FLOOD HAZARD BOUNDARY MAP (FHBM.) An official map of a community issued by the Federal Insurance Administrator, where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E. [US Code of Federal Regulations, Title 44, Part 59] FLOODWAY. The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Code, Chapter 2, Section 202] FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14] HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59] HISTORIC STRUCTURE means any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs. [US Code of Federal Regulations, Title 44, Part 59] NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14] RECREATIONAL VEHICLE means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. [US Code of Federal Regulations, Title 44, Part 59] REGULATORY FLOODWAY - see FLOODWAY. SPECIAL FLOOD HAZARD AREA. The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202] START OF CONSTRUCTION.



The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202] STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59] SUBSTANTIAL REPAIR OF A FOUNDATION. When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC] VARIANCE means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59] VIOLATION means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59] ZONES, FLOOD - ZONE A means an area of special flood hazard without water surface elevations determined ZONE A1-30 and ZONE AE means area of special flood hazard with water surface elevations determined ZONE AH means areas of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) feet, and with water surface elevations determined ZONE AO means area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft. (Velocity flow may be evident; such flooding is characterized by ponding or sheet flow.) ZONE A99 means area of special flood hazard where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. (Flood elevations may not be determined.) ZONES B, C, AND X means areas of minimal or moderate flood hazards or areas of future conditions flood hazard. (Zone X replaces Zones B and C on new and revised maps.) ZONE V means area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area) ZONE V1-30 and ZONE VE (for new and revised maps) means area of special flood hazards, with water surface elevations determined and with velocity, that is inundated by tidal floods (coastal high hazard area) PLANNING BOARD INFORMATIONAL SUMMARY: The Federal Emergency Management Agency (FEMA) has updated the Plymouth County Flood Insurance Study report and Plymouth County Flood Insurance Rate Maps. The Commonwealth of Massachusetts National Flood Insurance Program Office has

requested that the Town amend Section 3700 Floodplain District bylaw to reflect the updated Flood Insurance Study and Flood Insurance Rate Maps.

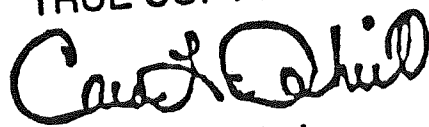
**PROPOSED MOTION:** Bruce Maki made a motion and was seconded to move that the Town approve Article 22 as set forth in the Warrant. **(2/3 Vote Required)** Recommendation: Select Board 0-0 Planning Board 5-0

**ARTICLE 22 VOTE:** PASSES UNANIMOUSLY BY 2/3 VOTE

IN TESTIMONY WHEREOF, I have hereunto set my hand and the official seal of the Town of Carver on this 3<sup>rd</sup> day of May 2021.



Cara L. Dahill  
Town Clerk

TRUE COPY ATTEST  
  
Town Clerk

## **FINAL VERSION OF ZONING BY-LAW AS AMENDED- WEDNESDAY APRIL 14, 2021**

### **ARTICLE 22: FLOODPLAIN DISTRICT:**

To see if the Town will vote to repeal Section 3700 of the Carver Zoning Bylaw in its entirety and replace it as set forth below or take any other action related thereto: 3700. FLOODPLAIN DISTRICT 3710. Scope of Authority. The Floodplain District is an overlay district and shall be superimposed on the other districts established by this bylaw. All regulations in the Carver Zoning Bylaw applicable to such underlying districts shall remain in effect, except that where the Floodplain District imposes additional regulations, the more stringent regulations shall prevail. 3720. Purpose. The purpose of the Floodplain District is to: 1) Ensure public safety through reducing the threats to life and personal injury; 2) Eliminate new hazards to emergency response officials; 3) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding; 4) Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding; 5) Eliminate costs associated with the response and cleanup of flooding conditions; 6) Reduce damage to public and private property resulting from flooding waters. 3730. Floodplain District Delineation. 3731. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Carver on the Plymouth County Flood Insurance Rate Map (FIRM) dated July 6, 2021, issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Plymouth County Flood Insurance Study (FIS) report dated July 6, 2021. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Building Commissioner, Planning Board, and Conservation Commission. 3740. Administration, Abrogation, Liability, Severability 3741. Administration and Enforcement. The Town designates the position of Building Commissioner to be the official floodplain administrator for the Town of Carver. The Building Commissioner shall administer and enforce this by-law section in accordance with Section 5100 of the Carver Zoning By-laws. 3742. Abrogation. The Floodplain management regulations found in this Floodplain District section shall take precedence over any less restrictive conflicting bylaws or regulations. 3743. Liability Disclaimer. The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection. 3744. Severability. If any section, provision or portion of this bylaw is deemed unconstitutional or invalid by a court, the remainder of the bylaw shall be effective. 3740. New Technical Data Submission Requirements If the Town acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town will, within 6 months, notify FEMA of these change(s) by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to: FEMA Region I Risk Analysis Branch Chief 99 High St., 6th Floor Boston, MA 02110 And a copy of notification to: Massachusetts NFIP State Coordinator Massachusetts Department of Conservation & Recreation 251 Causeway Street Boston, MA 02114 3750. Variances/Permits in the Floodplain 3751. Building Code Floodplain Variance. The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files. The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering the property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii)

such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain district.

3752. Local Zoning Variances. A variance from these floodplain bylaws must meet the requirements set out by State law, and may be only granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief.

3753. Floodplain Permits. The Town of Carver requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

3754. Permitting Review Process. Carver's permit review process includes the use of a checklist of all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain district. The proponent must acquire all necessary permits, and must submit the completed checklist demonstrating that all necessary permits have been acquired.

3755. Subdivision and Other Development Proposals. All subdivision and development proposal in the floodplain district shall be reviewed to assure that: (a) Such proposals minimize flood damage; (b) Public utilities and facilities are located and constructed so as to minimize flood damage; and (c) Adequate drainage is provided.

3760. Use Regulations.

3761. Permitted Uses. Except as otherwise provided, in the Floodplain District, no new building shall be constructed, and no existing structure shall be enlarged within its existing footprint, moved to a more vulnerable location, or altered except to upgrade for compliance with documented existing health and safety codes; no dumping, filling, or earth transfer or relocation shall be permitted; nor shall any land, building or structure be used for any purposes, except: a. Outdoor recreation, including play areas, nature study, boating, fishing and hunting where otherwise legally permitted, but excluding buildings and structures. b. Wildlife management or conservation areas, foot, bicycle, and/or horse paths and bridges, provided such uses do not affect the natural flow pattern of floodwaters or of any water course. c. Agricultural uses or forestry uses. d. Uses lawfully existing prior to the enactment of this bylaw.

3765. Use Limitations.

3766. No development or redevelopment shall be permitted within FEMA identified Special Flood Hazard Areas, except where fire, storm, or similar disaster caused damage to or loss of greater than 50% of the market value of buildings in this high hazard zone.

3767. No new public infrastructure or expansion of existing infrastructure shall be made in FEMA A flood zones unless there is a documented and accepted overriding public benefit provided, and provided that the infrastructure will not promote new growth or development in these areas. New or replacement water and/or sewer systems shall be designed to avoid impairment to them or contamination from them during flooding.

3768. Development and redevelopment shall be subject to the requirements of the FEMA identified Special Flood Hazard Areas and related policies and regulations;

3769. Public infrastructure and private wastewater treatment facilities may be constructed in FEMA Mapped A-zones provided that: 1) the facilities are consistent with the Flood Hazard Mitigation Plan and 2) the infrastructure is flood resistant.

3770. All new buildings or substantial improvements to existing structures in the FEMA Azone shall comply with FEMA and State Building Code regulations for elevation and flood proofing.

3771. In Zone AE, along watercourses within the Town of Carver that have a regulatory floodway designated on the Plymouth County FIRM encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge."

3772. All subdivision proposals must be designed to assure

that: a) Such proposals minimize flood damage; b) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and c) Adequate drainage is provided to reduce exposure to flood hazards. 3773. No activity shall increase the elevation or velocity of flood waters or flows in the floodplain district. 3775. Base Flood Elevation, Floodway Data and Flood Zones. 3776. Base Flood Plain Elevation Data. When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine, base flood elevations for each developable parcel shown on the design plans. 3776. Unnumbered A Zones. In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential structures to or above base flood level, and for prohibiting encroachments in floodways. 3777. Floodway Encroachment. In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. 3778. AO and AH Zones. Within Zones AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures. 3779. Recreational Vehicles. In A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready. 3780. Notification of Watercourse Alteration In a riverine situation The Town of Carver shall notify the following of any alteration or relocation of a watercourse: Abutting Communities: NFIP State Coordinator Massachusetts Department of Conservation and Recreation 251 Causeway Street, 8th Floor Boston, MA 02114 NFIP Program Specialist: Federal Emergency Management Agency, Region I 99 High Street, 6th Floor Boston, MA 02110 3790. Definitions. DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59] FLOOD BOUNDARY AND FLOODWAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.) FLOOD HAZARD BOUNDARY MAP (FHBM.) An official map of a community issued by the Federal Insurance Administrator, where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E. [US Code of Federal Regulations, Title 44, Part 59] FLOODWAY. The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Code, Chapter 2, Section 202] FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard

ASCE 24-14] HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59] HISTORIC STRUCTURE means any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs. [US Code of Federal Regulations, Title 44, Part 59] NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14] RECREATIONAL VEHICLE means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. [US Code of Federal Regulations, Title 44, Part 59] REGULATORY FLOODWAY - see FLOODWAY. SPECIAL FLOOD HAZARD AREA. The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202] START OF CONSTRUCTION. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202] STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59] SUBSTANTIAL REPAIR OF A FOUNDATION. When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or


structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC] VARIANCE means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59] VIOLATION means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59] ZONES, FLOOD - ZONE A means an area of special flood hazard without water surface elevations determined ZONE A1-30 and ZONE AE means area of special flood hazard with water surface elevations determined ZONE AH means areas of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) feet, and with water surface elevations determined ZONE AO means area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft. (Velocity flow may be evident; such flooding is characterized by ponding or sheet flow.) ZONE A99 means area of special flood hazard where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. (Flood elevations may not be determined.) ZONES B, C, ANDX means areas of minimal or moderate flood hazards or areas of future conditions flood hazard. (Zone X replaces Zones B and C on new and revised maps.) ZONE V means area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area) ZONE V1-30 and ZONE VE (for new and revised maps) means area of special flood hazards, with water surface elevations determined and with velocity, that is inundated by tidal floods (coastal high hazard area) PLANNING BOARD INFORMATIONAL SUMMARY: The Federal Emergency Management Agency (FEMA) has updated the Plymouth County Flood Insurance Study report and Plymouth County Flood Insurance Rate Maps. The Commonwealth of Massachusetts National Flood Insurance Program Office has requested that the Town amend Section 3700 Floodplain District bylaw to reflect the updated Flood Insurance Study and Flood Insurance Rate Maps.

A True Copy, Attest:



Cara L. Dahill  
Town Clerk  
108 Main Street  
Carver, MA 02330

TRUE COPY ATTEST



Town Clerk

THE UNIVERSITY OF CHICAGO

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